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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,324	01/20/2004	Brett Lickle	LKL-100	9784
60612 7590 11/06/2007 MCCARTER & ENGLISH, LLP BASIL S. KRIKELIS Renaissance Centre 405 N. King Street, 8th Floor WILMINGTON, DE 19801			EXAMINER NGUYEN, TAM M	
			ART UNIT 3764	PAPER NUMBER
			MAIL DATE 11/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/760,324

Applicant(s)

LICKLE, BRETT

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11, 13, 14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11, 14 and 16-19 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "spherical inserts corresponding to a different degree of balancing difficulty" of claim 18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 18 discloses "spherical inserts corresponding to a different degree of balancing difficulty" yet this limitation is neither discussed in the specification nor shown in the drawings; thus, this limitation will not be given patentable weight in order to expedite the prosecution.

Claim Rejections - 35 USC § 102

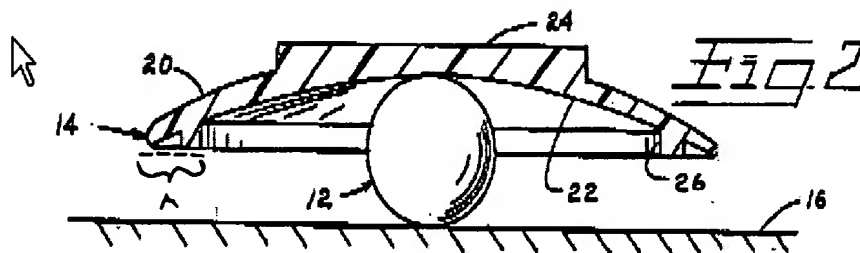
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6, 7, 9 and 16 remain rejected under 35 U.S.C. 102(b) as being anticipated by Armer, Jr. '371 (see Paragraph 7 of the last Office Action dated April 11, 2007).

3. Note, Armer also discloses that the lower surface (A) comprises a concave region extending into the board from the lower surface toward the upper surface whereby the apex of the concave region is disposed between the lower surface and the upper surface (see Fig. 2 below).



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 10 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Armer, Jr. '371 in view of Sasser, Jr. '049 (see Paragraph 10 of the last office action).

4. In particular, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the shape of Armer's concave region into any of an array of shapes including that of an oval or rectangle to facilitate the simulation of reciprocating motion such as in surfing as long as the insert is still able to rotate in all directions and the shape provides an adequate stop to prevent the platform from disengaging from the spherical fulcrum insert.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armer, Jr. '371 in view of McGuiness '551.

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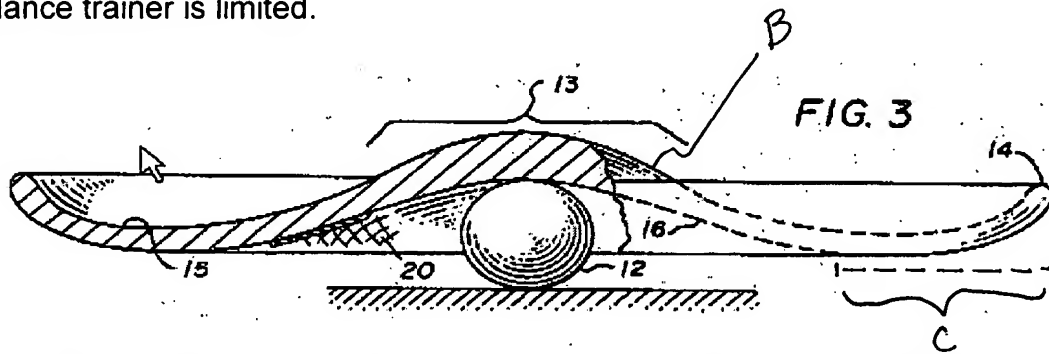
5. Armer discloses a balance training device as described above (see discussion of claim 6). Armer does not disclose a securing device adapted to secure the balancing insert to the board. McGuiness discloses a balance training device that includes a board (46), a balance insert (20) and a securing device (16,28) (see Figs. 1 & 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine McGuiness' securing device to Armer's balance training board device to acclimate beginning user's to Armer's device, and the securing device also allows for a user to easily secure the entire device together to facilitate transport and storage.

Claims 6,14 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over England '768 in view of Sasser, Jr. '049.

6. As to claims 6, 14, 16 and 17, England discloses a balance training device and inherently a method for exercising as substantially claimed, the device comprising a board (11) and a balance insert (12) wherein the board includes a top surface (B) and a bottom surface (C) having a concave region extending into the board from the lower surface toward the upper surface whereby the apex of the concave region is disposed between the lower surface and the upper surface (see Fig. 3 below). England does not disclose that the trainer further comprises a platform having a concave top surface and a substantially flat bottom surface wherein the balance insert rides on said top surface. Sasser discloses a similar trainer having a platform (42) having a concave top surface (62) and a substantially flat bottom surface (54) wherein a balance insert (34) rides on said top surface (see Figs.3-6). At the time of the invention, it would have been obvious to a person of ordinary skill in the art combine Sasser's platform with England's board

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and insert to allow a user to ride the board over the insert in multiple directions but within a fixed area defined by the concave top surface when overall floor space for the balance trainer is limited.



7. As to claims 18 and 19, England and Sasser disclose a method of exercise using the balance trainer as described above (see discussion of claim 16). England further discloses the use of spherical inserts corresponding to different degrees of difficulty and inherently using multiple balance boards having sequentially different concave regions to obtain a desired level of exercise difficulty (see Col. 4, lines 19-59). As to claims 8 and 10, applicant argues that adding a spherical insert to the Sasser reference would destroy the reference's intent of having a more stable configuration. The examiner is not contending that it is obvious to add spherical inserts to Sasser's reference, but rather it is obvious to change the shape of Armer's concave region in light of the different shapes disclosed by Sasser in order to change the skill level required to use the Armer balancing device.

Allowable Subject Matter

8. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments filed October 9, 2007 regarding claims 6-10 and 16-19 have been fully considered but they are not persuasive. As to claims 6, 7, 9 and 16, both Armer and England disclose the new limitation of "the lower surface comprises a concave region extending into the board from the lower surface toward the upper surface whereby the apex of the concave region is between the lower surface and the upper surface." Note, the lower surface in each reference has been traced in broken lines to clarify the examiner's interpretation of the lower surface in each reference.

10. Applicant's argument with respect to claim 11 has been considered but is moot in view of the new ground(s) of rejection.

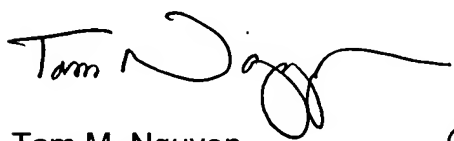
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

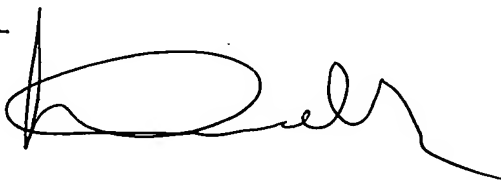
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 29, 2007

A handwritten signature in black ink, appearing to read 'Tam M. Nguyen'.

Tam M. Nguyen

A handwritten signature in black ink, appearing to read 'Jerome Donnelly'.

JEROME DONNELLY
PRIMARY EXAMINER